

California's Open Government and Ethics Requirements

October 1, 2020

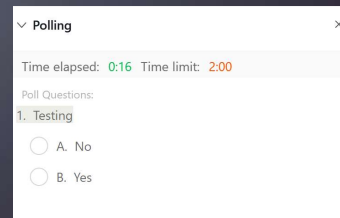
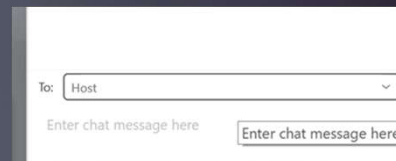
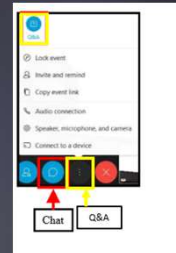
Presented By: Glen R. Googins, City Attorney and
Kerry Bigelow, City Clerk

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- Polling questions will appear throughout the presentation in the Polling sidebar



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Presentation Outline

I. Open Government

- Brown Act
- Public Records Act
- Financial Disclosure (Form 700)

II. Ethics

- CV Code of Ethics
- Incompatible Offices/Activities
- Conflicts of Interest
- Temptations/Perks
- Due Process

III. Closing Remarks

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In her last case before the Supreme Court as an attorney, Ruth Bader Ginsburg challenged a Missouri law which allowed women, but not men, to opt out of jury service. She argued that the law was discriminatory and treated women's service on juries as less important than men's. During oral argument, which of the following Justices asked her, "You won't settle for putting Susan B. Anthony on the new dollar, then?"

- A. Stephen Breyer
- B. Samuel Alito
- C. Anthony Kennedy
- D. William Rehnquist

Question #1

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I. Open Government

BROWN ACT
PUBLIC RECORDS ACT
FINANCIAL DISCLOSURE (FORM 700)

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Background

- Authored by Ralph M. Brown, an Assemblyman from Turlock, CA
- Enacted by the California State Legislature in 1953 in an effort to safeguard the public's ability to obtain access to and participate in local government meetings and deliberations
- Originally a 686-word statute
- Now Contained in California *Government Code* §§54950-54963



Ralph M. Brown

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The Ralph M. Brown Act 6

Cal. Govt. Code §§ 54950, et. seq.

Core Principles

- Local agencies can only deliberate and take actions at public meetings
- Public must be notified in advance of all meetings and matters to be considered
- Public must be given access to information and opportunity to provide input to decision-makers
- Exceptions are limited

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Application: *Who is subject to the Act?*

- Applies to all local "legislative bodies" and their members
 - City Councils and County Boards
 - B/C/Cs
 - Sub-Committees of a legislative body, with limited exceptions
 - Regional Boards
 - BIDs and PBIDs per Streets and Highway Code
- Does not govern conduct of City staff

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Definition of Meeting



Any congregation of a majority of the members at the same time and place to hear, discuss or deliberate an issue in the subject matter jurisdiction of the body



No action is required; "Mere" discussions qualify



Includes informal gatherings, with or without public attendance or City sponsorship

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What Else is a Meeting?

- Other forms of communication constituting a "meeting" include:
- **Writings:** Written communication, including e-mails, between a majority of the members
- **Intermediary Communications:** communications between employees or agents on behalf of a majority of members
- **Serial Communications:** a chain of communications from member A to member B, then member A or B to member C (until a quorum of members contacted)

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Meeting Exceptions

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- Not a “meeting” if a majority of members attend:
 - Conference open to the public
 - Open and publicized meeting of a local group
 - Open, noticed meeting of another legislative body
 - Social or ceremonial event
 - Open, noticed meeting of a standing committee (but can't participate)
- Gray area: seek legal advice first
 - Often advisable to notice the meeting or limit attendance to less than majority
- Quorum still can't discuss city business

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Meeting Exceptions (cont'd)

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- Memoranda from City Manager or City Attorney to all City Council Members
- Communications for purposes of calling a special meeting or setting an agenda
- Individual contacts or conversations between less than a majority of members and members of the public

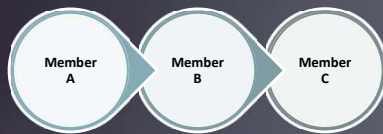


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Serial Meeting Examples

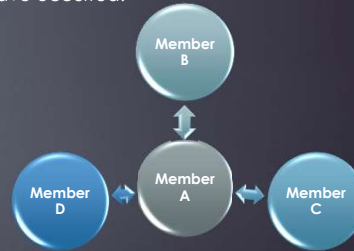
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Daisy Chain



A chain of communications (via phone, email, in person, etc.) involving contact from Member A to Member B, who then communicates with Member C would constitute a serial meeting in the case of a five-person body.

When a person acts as the hub of a wheel (Member A) and communicates individually with the various spokes (Members B and C) regarding a matter under the jurisdiction of the board/commission a serial meeting may have occurred.



Hub & Spoke

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Potential Violations

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Intermediary Communications

- Communications between employees or agents on behalf of a majority of the members are prohibited
- Staff members must exercise care not to disclose members' view and positions to other members

Email Communications

- An email exchange between a quorum of members regarding matters within their purview violates the Brown Act
- If staff needs to communicate with members by e-mail, it is good practice to "BCC" the members, so that a member doesn't inadvertently violate the Brown Act by simply replying all

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Question #2

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In the 1893 case, *Nix v. Hedden*, the Supreme Court decided that a tomato is a:

- A. Fruit
- B. Vegetable
- C. Dessert
- D. Main course

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Meeting Rules- *Proper Notice*

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- In Advance
 - 72 hours Regular Meeting
 - 24 hours Special Meeting
- Indicate location and time
- Description of items to be discussed
- Posted and mailed to those requesting
- City Council Agendas must also be posted on internet

Note: Starting January 1, 2019 posting must be prominent and searchable.

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Meeting Rules - Qualified Location

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- **Must be held within the jurisdictional boundaries of the City, unless a specific exemption applies:**
 - Comply with a law or court order
 - Inspect property outside of city
 - Multiagency meeting
 - No meeting facility within the jurisdiction
 - Meeting with federal/state officials on a legislative or regulatory issue
 - A facility outside of the City, which is the topic of discussion
 - Closed session at legal counsel's office regarding pending litigation when it would reduce legal fees or costs
- Location must be ADA accessible.
- Remote attendance by teleconference possible.

NOTE: City Charter §308 provides additional rules for City Council meeting locations and actions.

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COVID19 PANDEMIC: SPECIAL RULES

*California Executive
Order N-29-20,
March 17, 2020*

Allows local legislative or state bodies to hold public meetings via teleconference without having to provide a physical location from which members of the public may observe the meeting and offer public comment, as long as members of the public are allowed to observe and address the meeting telephonically or otherwise electronically, subject to specified notice and accessibility requirements.

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Meeting Rules -
What You Can Talk About


- Only items listed and clearly described on timely posted agenda can be discussed or acted upon
- If any question about adequacy of description, better not to act

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Purpose of Agenda

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- To inform the public what will be discussed at the meeting so they can determine whether to monitor or participate in the meeting.



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Agenda Item Titles

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The Brown Act requires that agenda item titles **fully** describe the issue or action to be discussed and/or taken

The title generally does not need to be longer than 20 words

It should be clear to a member of the public what will be discussed and what is sought regarding the item (approval, direction, acceptance, etc.)

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Agenda Heading & Titles

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Sufficient?	Better?
Discuss Arts Master Plan	Resolution Recommending Amendments to City Arts Master Plan to Add a Proposal for a West Side "Black Box" Theater and Club at the Vogue, and Possible Funding Sources for Same
FY19 PLAN REALLOCATIONS	CONSIDER PROPOSED AMENDMENT OF MEASURE P SPENDING PLAN AND FY18/19 BUDGET TO CHANGE TIMING OF EXPENDITURES IN CERTAIN CATEGORIES

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Meeting Rules – What You Cannot Talk About

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- Cannot consider, discuss, deliberate or act on matters not on the agenda
- Otherwise, only appropriate action is to refer item to staff and/or for consideration on a future agenda
- Brief response, question or statement o.k.
- Limited Exceptions:
 - Emergency Majority vote determines an “emergency” exists; (e.g. crippling natural disaster, terrorist act, or major work stoppage); or
 - Urgency Two-thirds (4 of 5) vote determines the need to take immediate action exists and agency knowledge of need arose after the agenda was posted

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Meeting Rules *Subcommittees*



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- The Brown Act generally applies to all boards, commissions, committees and other bodies created by charter, resolution or formal action of a legislative body
- Applies whether the body is permanent or temporary, advisory or decision making
- Limited Exception – A true “Ad Hoc” Subcommittee
 - Comprised solely of less than a quorum of the members of the appointing body; and
 - Does not have continuing jurisdiction over a particular subject matter
 - Cannot have members of other legislative bodies or other 3rd parties
 - Limited duration: ideally 6 months or less
- Staff created Citizen/Business Committees also exempt
- Many gray areas. Seek City Attorney advice

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Question #3

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Which Supreme Court Justice wrote the following in a dissenting opinion: "One would think that Freedom of Intimacy is abridged, rather than expanded, by marriage. Ask the nearest hippie."

- A. Ruth Bader Ginsburg
- B. Clarence Thomas
- C. Antonin Scalia
- D. John Paul Stevens

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Closed Session: The exception, not the rule

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- The Act limits what can be discussed behind closed doors to specified topics and circumstances
 - License/Permit Determination for rehabbed criminal (§54956.7)
 - Real Property Negotiations – Price and Terms (§54956.8)
 - Existing Litigation [§54956.9(a)]
 - Anticipated Litigation [54956.9(b)]
 - Liability Claims (§54956.95)
 - Threat to Public Safety/Services [54957(a)]
 - Public Employee Appointment/Employment/Performance Evaluation/Discipline/Dismissal/Release [54957(b)]
 - Labor Negotiations (§54957.6)
- Seldom used by Board and Commissions

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Closed Session - Confidentiality

- Confidential information obtained during closed session cannot be disclosed outside the session
 - Includes City negotiating positions in real estate, labor talks, and City vulnerabilities or settlement positions in litigation
- Only a majority vote of the legislative body can authorize disclosure
- Penalties for unauthorized disclosure include referral to the grand jury, injunctive relief, and disciplinary action

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Rights of the Public

- Attend, observe, and speak at meetings
- Attend and speak without being required to give identifying information
- Record the meeting with audio or video and take pictures
- Review agendas and other documents distributed to a majority of the board (must be available to the public at the same time)*
- Request in writing that the agenda or agenda-related documents be mailed to them
- Obtain a copy of audio or video of the meeting
- Criticize or complain about processes or procedures.

** Some exceptions may apply*

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Rights of the Public - *Public Comment*

Regular Meeting

- Agenda Items: Comment must be allowed; reasonable time limits can be adopted by local agency. Current City Council time limit: 5 minutes.
- Non-agenda items: Agenda must provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public within its purview
 - No action or discussion can occur
 - Can refer to staff for information; request a report back; request item be placed on future agenda
 - Current City Council time limit: 3 minutes



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Rights of the Public - *Public Comment*

Special Meeting

- Must allow comment on agenda items
- Comment on non-agenda items is permissible but not required

Special Rule for Non-English Speakers

- As of January 1, 2017, AB1787 now requires twice the allotted time be provided for translation for non-English speakers unless simultaneously translation equipment is available

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Emerging Area: Social Media and the Brown Act

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- Increased risk of Serial Meetings
- Increased risk of bias "pre-determination" and due-process violations
- Emails, texts, tweets or posts during meetings deny public access to decision making process
- Brown Act applies, but no case law exists to clarify how and when

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Good Post/Bad Post

Good:

- "City Council will consider the tax rates to be set for Cannabis Businesses at our January 15th meeting. Please come and share your views!"

Not so good:

- Charles Hatfield, LLC's proposal to dam Otay River and build a white-water rafting park is absurd and violates CEQA! Please join me in opposing their CUP application at a public hearing on January 15th!"

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Violations of the Brown Act: *Remedies and Penalties*

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Civil Remedies

- Can be brought by any interested person or DA
 - Invalidation Action: to void past acts
 - Injunctive or Declaratory Relief: to prevent future violations
- Procedural requirements allow opportunity to cure and correct action taken
- Costs and attorneys' fees may be awarded against agency; City may recover fees if lawsuit is frivolous.

Criminal Penalties

- Member may be subject to misdemeanor penalties if:
 - Attends meeting at which action taken violates the Act; and
 - Intends to deprive public of information
- Loss of public trust

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Practice Tips for Brown Act Compliance

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1. Avoid sharing info about another council/committee/commission member's views
2. Do not direct or cc emails to a quorum or more of your council/board colleagues, or "reply all" on city business
3. Refrain from public statements (including use of social media) that state final positions on matters pending before you
4. Review Agendas in advance of meeting and think about Brown Act parameters
5. Don't discuss items not on agenda; instead, refer them to staff for future discussions with consensus of your board
6. Don't forget to allow for public input (err on the side of more vs. less; apply rules even-handedly)
7. When in doubt, don't act
8. If unclear, seek advice from City Attorney's office--in advance whenever possible

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Question #4

In 1809, while they constructed what later became the Supreme Court Room, the Supreme Court members had to come up with another venue. Where did they meet?

- A. The Chief Justice's back patio
- B. A Tavern
- C. A Golf Club
- D. The Library of Congress

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Public Records Act Core Principles *(Government Code Sections 6250 thru 6270)*

- The public has the right to see records related to the conduct of public business
- Government must maintain and be prepared to provide public records in a timely manner
- What constitutes a public record is broadly defined

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What is a Public Record?

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Defined specifically in applicable statutes, Municipal Code, City business practices, or policies



In the absence of specific legal definition, a record is the document or information generated as the final output of a business process or business decision



A record can be in any format: either physical or electronic, structured or unstructured; and will be retained by the responsible department in its final form

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What is Not a Public Record?

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Not all information is public or disclosable; exemptions may include:

- Private information about individuals (e.g., personally identifiable information, taxpayer information, medical information, etc.)
- Personal information about employees
- Drafts or working copies or transitory documents or notes
- Details about security of critical infrastructure (e.g., electrical, water, or sewer facilities, computer networks)
- Privileged documents (i.e. attorney-client privilege)
- Deliberative Process: Records may also be exempt; example RFP
- Balancing of competing interests' public benefit of disclosure v. need or rights to privacy (GC 6255)

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Public Records Act- *Responsiveness Required*

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- A response must be provided within 10 days of request.
- Additional time may be allowed in limited circumstances
- Additional duties include:
 - Provide record more quickly if you can
 - Help requester formulate effective request
 - Explain why records withheld
 - Can charge reasonable copy fees before providing records, but inspection is free
 - Can't charge for staff time unless creating a record that doesn't exist and requester agrees in advance

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AB 992 – Open Meetings and Social Media

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- Approved by Governor Gavin Newsom on Sept. 18, 2020
- First amendment to the Brown Act to address public officials' use of social media
- A public official may communicate on social media to:
 - (1) Answer questions;
 - (2) Provide information to the public, or solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction*
 - *Only permitted if a majority of the legislative body do not use any social media platform to "discuss among themselves" official business
 - "Discuss among themselves" → can include posting, commenting, and using digital icons ("emojis") to express a reaction to communications made by other members of the legislative body.

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AB 992 – Open Meetings and Social Media

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- A public official may NOT respond directly to any communication on social media regarding a matter within the subject matter jurisdiction of the legislative body that is made, posted, or shared by another member of the legislative body.
 - Example: posting a comment or emoji in response to another public official's Facebook post about an agency issue (assuming both serve on the same legislative body).

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AB 992 – Open Meetings and Social Media

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- Applies to all internet-based social media platforms that are “open and accessible to the public”
 - Members of the general public able to access and participate in platform free of charge
 - No approval needed by platform (or a person or entity other than platform) to access
 - Cannot be blocked from participating (except for violation of rules/terms of service)
- Applies to comments, re-tweets, likes, dislikes, smiley faces, sad faces, screenshots, re-posting
- Facebook, Twitter, blogs, Instagram, Reddit, SnapChat, TikTok (and more)



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Public Records Act *Practical Tips*

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- Be prepared to promptly disclose records if requested
- Communicate carefully, especially in emails
- Don't use private email or cell phone to conduct City business. If you do, keep a record and be prepared to disclose



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Form 700 Financial Disclosure *[Government Code Section 87200]*

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- Public Officials (elected, appointed officials & manager level employees) are required to disclose specified financial information
- Filed on a Form 700 – Statement of Economic Interests
- The Form 700 must be completed and filed with City Clerk when assuming office, annually, and upon leaving office
- Publicly available on the City's Website

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Form 700 Reporting Requirements

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- Depending upon the public official's "designation" some or all of the following must be reported:
 - Income (except govt. income)
 - Real Property (except primary residence)
 - Investments
 - Business Positions
 - Loans (except institutional loans)
 - Gifts (\$50 or more from a single source in calendar year)
 - Travel Payments
 - Business entity ownership - 10% interest or greater
- Rules can be complex. Consult Form Instructions or FPPC for guidance (<http://fppc.ca.gov/>)

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Question #5

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Sandra Day O'Connor became the first female to serve on the Supreme Court. Which President appointed her?

- A. Bill Clinton
- B. Ronald Reagan
- C. Jimmy Carter
- D. Gerald Ford

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Questions?

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II. ETHICS

1. CV Code of Ethics
2. Incompatible Offices/Activities
3. Conflicts of Interest
4. Temptations/Perks
5. Due Process

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Ethics - Defined

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- From the Greek "ethos" meaning "character"
- Now commonly understood to mean the beliefs or ideals that characterize a community, nation or ideology
- For our purposes: the laws and guiding principles that govern and encourage good conduct by public officials and employees

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Question #6

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The U.S. Constitution spells out requirements for becoming President or a member of Congress, including age and citizenship. How many Constitutional requirements are there to become a Supreme Court Justice?

- A. 0
- B. 1
- C. 2
- D. 3

Bonus Question: What are they?

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Chula Vista's Code of Ethics

[CVMC Chapter 2.01]

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- In 2013 the City formalized its Code of Ethics with an amendment to CVMC Chapter 2.01
- The Code applies to the Mayor, the City Council, all Boards and Commission members, and all Senior City Management
- The Code is divided into two categories- "Guiding Principles" and "Specific Prohibitions"

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Guiding Principles

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- Thirteen Guiding Principles (Plus three more for the Board Of Ethics)
- Designed to provide standards for good conduct and fair and impartial decision-making
- Key Principles Include:
 - (1) Acting in the best interests of the public
 - (5) Putting the public's interest above one's own personal interests.
 - (6) Protecting and enhancing the image and reputation of the City
 - (9) Awareness of one's financial interests to ensure that such interests do not influence one's City related conduct or actions
 - (11) Avoid even the appearance of a conflict of interest

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Specific Prohibitions

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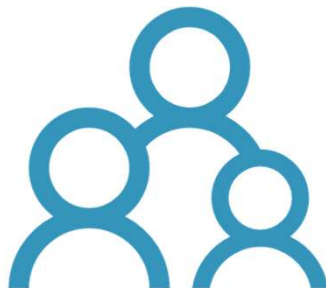


- Thirteen Total Prohibited Acts
- Designed to Provide Clear Rules of What Constitutes Unethical Behavior
- Key Prohibitions Include:
 - (2) Using one's office for personal gain
 - (4) Use City property for unauthorized/personal uses
 - (6) Within 12 months after leaving the City appear for compensation before the City representing a private interest
 - (8) Endorse or recommend for compensation a commercial product or service in the name of the City
 - (10) Coerce a subordinate or other City employee to engage in political activities

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Code of Ethics Practice Tips

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- Review and abide by the Code of Ethics
- Always place the public's interest above your own.
- If in doubt, ask for help

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Incompatible Offices (Government Code Section 1099)

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- Prohibits a person from simultaneously holding two public offices that are "incompatible" (GC 1099)
- First step: Are there two public offices?
 - Regulated Offices are generally Elected or Appointed
 - Employment with a Public Agency is not an "office" for these purposes
- Second step: Are they the two offices incompatible?
 - Standard: Where one office exercises supervisory, auditing or removal power over the other.
 - Example: A local school board member can't also serve on the County Office of Education
 - Consequences for Violation: Forfeiture of office

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Incompatible Activities

(Government Code Section 1126)

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- General Rule. A local agency officer or employee shall not engage in any employment or activity for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee (GC 1126)
- Local Agency Control of Specifics. A local agency may define what is prohibited and establish rules for review and approval of outside activities by employees.
- Elected Official Exempt. Rule does not apply to elected officers (GC 1126)
- Example: Should a Deputy City Attorney moonlight as a "bud-tender" at a Chula Vista Cannabis Store?

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Conflicts of Interest Under the Political Reform Act

[Government Code Section 87100 et seq.]

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- “Public Official” may not take part in any governmental decision in which the official has a disqualifying economic interest
- When it is reasonably foreseeable that the subject decision will have a material financial effect on such economic interest, a conflict exists
- If there is a conflict recusal is required

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What is an Economic Interest?

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Economic interests include:

- Business Entities-Over \$2,000 interest or management position
- Real Property Interest- Over \$2,000 (or within 500 feet of subject of decision)
- Sources of Income-Over \$500 within 12 months of decision
- Sources of Gifts: Over \$500 within 12 months of decision
- Personal Financial Effects: Personal incomes, expenses, assets, or liabilities of the official or immediate family

Exception: Campaign contributions to City Councilmembers are not considered economic interests

However: Campaign contributions to sitting Board or Commission members in excess of \$250 are economic interests and grounds for recusal

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FPPC Three-Part Test

The FPPC has created a three-part test to determine if a conflict exists:

1. Is it "reasonably foreseeable" that the decision will have a financial effect on any of the public official's financial interest? If NO, there is no conflict. If YES, proceed to Step 2. *[Reasonably foreseeable is defined in Regulation 18701]*
2. Will the "reasonably foreseeable" financial effect be material? If NO, there is no conflict. If YES, proceed to Step 3. *[Materiality standards are found in Regulation 18702]*
3. Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from the effect on the public generally? If YES, then there is no conflict. If NO, then there is a conflict, and the public official must not participate. *[Public generally is defined in Regulation 18707]*

Note: Under the new rules, public generally exception is very difficult to apply; an FPPC opinion confirming its application is advisable.

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Political Reform Act: Practice Tips

Practice Tips:

1. Know your economic interests
2. Ask yourself--does the decision impact in any way my economic interests?
3. If it does, recuse yourself
4. When in doubt, seek assistance or consider recusal
5. Remember making a decision is more than voting, it includes influencing that decision
6. If recusing oneself-prior to matter being discussed, state basis for recusal and leave room.

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Question #7

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This Justice led the National Football League in rushing for the 1938 and 1940 seasons, playing for the Pittsburgh Pirates and the Detroit Lions, respectively.

- A. Gerald Ford
- B. Byron White
- C. John Paul Stevens
- D. John Harlan

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Common Law Bias

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- Common law is law established by judicial rulings (as opposed to statutes)
- Prohibits actions or involvement by public officials in a matter where there is a high likelihood that their personal interests could be placed above their duty of loyalty to the public
- Typical "personal interests" include financial interests (that may not be covered by the PRA), or the material involvement of, or potential impact upon a close family member, close friend, or affiliated group
- Example: A Planning Commissioner's daughter is seeking a Conditional Use Permit for a new car wash business. The daughter is grown (not a dependent) and the Planning Commissioner has no financial interest in the business. The Planning Commissioner should still recuse herself

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Required Analysis

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Subjective and Objective Components

- What you think and feel about the potential for divided loyalty?
- What a reasonable observer might think?



Factors to Consider

- How material is the interest?
- How close is the relation?
- What would the headline read?

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Nepotism

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- Nepotism is a form of common law bias based on familial relationship
- Generally, should not participate in matters which involve family members
- City Charter (Section 510) expressly prohibits appointments by City Council or Department Head/Appointing Authority of their family members to salaried positions within City

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Prohibited Self Dealing in Contracts

[Government Code Section 1090]

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- Government Code section 1090 deals with the making of a contract and prohibits self-dealing
- Basic rule: Officer or employee may not make or participate in making a contract in their official capacity if financially interested
- Recusal is insufficient. Contract is void. Participation may be criminal offense and require resignation.
- If there is a remote interest the contract can be made, but officer/employee must recuse him/herself and not participate in any manner.

Practice Tip:

- Ask yourself-Will I personally gain or benefit from this contract?
- This is a tricky area. Seek advice in advance

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Bribery

[Penal Code Section 68]

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- Bribery is the act of requesting, accepting, or agreeing to receive money or any other consideration in exchange for one's vote or action on any matter.
- It is a felony under both state and federal law.
- Under state law, the crime of bribery can result in prison time (2-4 years), fines, the loss of one's public office, a ban on holding future public office. May also result in loss of retirement benefits (PEPRA).
- Convictions under federal law can result in prison time of up to 15 years.

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Misuse of Public Funds/ Unlawful Gifts of Public Funds

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- Penal Code section 424 and Government Code section 8314 make it unlawful to use public funds for personal or campaign activities
 - Public funds include money, equipment, supplies, compensated staff time, use of telephones, computers, fax machines, etc.
 - Violations may be charged as felonies or misdemeanors; violators may be fined, sent to jail, and/or barred from holding public office
- California Constitution Article XVI, Section 6, prohibits gifts of public funds

All public funds should be used for public purposes

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Mass Mailings [Government Code Section 89001]

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Mass Mailings by an elected official using public funds are prohibited.

Mass mailings are defined as:

1. Tangible item delivered, by any means, to a person's residence, place of business, or post office box;
2. Where the tangible item either:
 - Features an elected officer affiliated with agency which produces or sends the mailing; or
 - Includes the name, office, photograph or other reference to an elected official with the agency that produces or sends the mailing;
3. Where all or any portion of the cost is paid for with public monies; AND
4. More than 200 substantially similar items are sent in a single month

Note: No current FPPC rule prohibits mass transmission of electronic communications. But still must be aware of prohibitions on use of office/ public funds for political purposes in Penal Code 424 and Govt. Code 8314

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Mass Mailing Rules 60 Days Before an Election [SB 45/Government Code Section 89003]

Sixty 60 days before an election an Elected Official cannot provide as a mass mailing the following:

- An item where the Elected Official's name appears in letter head (including roster type listing) or logo on stationary or forms, including "For Your Information" or "Compliments of" cards or stamps
- An announcement of a meeting or event that:
 - Is sent to the Elected Official's constituents, related to Elected Official's duties, held by the Elected Official, and which the Elected Official plans to attend
 - That is an official agency event or meeting where the agency is providing the use of a facility or financial support
- A business card

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Question #8

The top floor of the Supreme Court building contains the "Highest Court in the Land." What is it?

- A. A Tennis Court
- B. The Chambers
- C. A Food Court
- D. A Basketball Court

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Gifts
[Government
Code
Sections
89503 et seq.]

Make sure you are not being unduly influenced by gifts, if you are a designated public official, state law requires you to keep track of and disclose in an annual report gifts you have received in your capacity as a public official.

70

STATE LAWS REGULATING GIFTS 71

What is a gift?

Any payment or other benefit provided to an official that confers a personal benefit for which the official does not provide goods or services of equal or greater value

Includes a rebate or discount in the price of anything unless the rebate or discount is made in the regular course of business to members of the public

71

Gifts Reporting Requirement

Designated public officials must report all gifts received from a single source in 12-month reporting period on Form 700 if aggregate value of gift(s) is \$50 or more

72

Gifts - Limitations

- There is also a limit on the value of gifts you may receive from any one source
- Current limit: \$500 in 12-month period (adjusted every 2 years (current period ends 12/31/20))
- If you accept gifts in excess of the limit:
 - You have violated the Political Reform Act and are subject to civil and criminal penalties
 - You are deemed to have a disqualifying economic interest in any matter involving the gift giver and you may not participate in such matter

73

Gifts Exceptions

- Gifts returned within 30 days
- Gifts from family members
- Unused tickets
- Personalized plaques
- Informational material
- Gifts of hospitality
- Two tickets to a political or 501(c)(3) organization fundraiser provided by the organization
- Equal value gifts (friends commonly exchange), but be wary
- **Campaign Contributions** (But see special rules, below)

74

74

Gifts Exemptions from limit prohibition but reportable

75

- Wedding gifts
- Prizes that result from a bona fide competition
- Some gifts of travel within the United States (including travel within California)

More information later regarding special rules for travel gifts

75

Gifts – Practice Tips

76



Be wary of gifts.



Keep track of gifts to facilitate
and assure accurate reporting.



Assume a higher value. If close to
limit, decline or return. If close to
reporting requirement, disclose it.



If you discover something you
forgot, amend your Form 700.

76

Honoraria *[Government Code Section 89502]*

77

- Prohibited to designated public officials
- A payment for speech, article published, or mere attendance at an event such as conference or meeting
- Exceptions—for certain specified professions
- Can give back or donate to City within 30 days to avoid violation

77

Travel/Lodging/Reimbursement Expenses

[Government Code Section 89506]

78

General Rule:

- Payment for travel, lodging, and reimbursement for expenses are considered gifts under state law subject to reporting requirements and limits.

Exceptions:

- Payment from another state, local, or federal agency or non-profit as part of the employee's official duties for education, training, interagency programs of purposes
- Travel expense reimbursements where travel is for official agency business and reimbursements are paid by the agency
- A payment for travel that constitutes a lawful and reported (as required) campaign contribution
- Payment from another government agency or non-profit to reimburse travel where the official is giving a speech or presentation

78

Travel Gifts from Transportation Companies Prohibited

[Cal. Const. Art. XII, §7]

79

- California Constitution prohibits gifts of travel to certain public officials by transportation companies
- Prohibition does not apply to employees
- Applies to interstate or foreign carriers
- Applies regardless if travel is for personal or official business
- Violation will result in forfeiture of office
- Dates back to days of California Southern Pacific Railroad's activities in 1900's

79

Question #9

Which Supreme Court justice also served as President of the United States?

- A. President William Howard Taft
- B. President Calvin Coolidge
- C. President Woodrow Wilson
- D. President Benjamin Harrison

80

Loans

- All Form 700 Filers must disclose loans received from other persons
- Loans from commercial banks, lending institutions, or from close family members do not have to be disclosed
- Loans over \$250 from other City employees, or from parties with whom the City contracts are prohibited
- Requirement for Written Loan Agreement:
 - A personal loan of over \$500 to an elected official must be in writing and set forth key terms, including the date of loan, the loan amount, interest rate, collateral
- *Practice Tip: Avoid loans from people or companies with City business*

81

Behests

[Government Code Section 82015]

82

- A "behest" occurs when a person donates for charitable, governmental, or legislative purposes on behalf of or in response to a solicitation by an elected official
- Disclosure required
 - When solicited by an elected official
 - Donor makes payments totaling \$5,000 or more in a calendar year
 - Charitable, legislative, or governmental purpose
 - Disclose required on Form 803 within 30 days of donor's payment

82

General Campaign Contribution Rules

83

Campaign contributions are subject to separate reporting requirements and limits under state and local law

Beyond the scope of this presentation

For Chula Vista's local rules, see Chula Vista Municipal Code Chapter 2.52

83

Gift Exceptions Special Rules for Campaign Contributions

84

- For elected officials, a campaign contribution is not a gift under state law subject to reporting or limits
- Similarly, campaign contributions are not treated as income under the Political Reform Act for conflict of interest purposes
- Other prohibitions could still apply (e.g., bribery)

84

Gift Exceptions Special Rules for Campaign Contributions


85

- For board and commission members running for office, no such member may solicit or receive campaign contributions over \$250 when the contributor has an item involving a permit, license, or other entitlement pending before that member, during the time period commencing 12 months before and ending 3 months after the member's decision on such item.
- If such a contribution is solicited or received, the member must recuse himself/herself from participation
- Participation may be permitted if the contribution is returned within 30 days of learning about the contribution and pending matter


85

86


Due Process
(Fairness)



Entitlement to a fair hearing



Competitive bidding



Generally

86

87

Fair Hearing Requirements

Common Law Requirements:

- Generally apply to government decisions where a quasi-judicial determination is being made
- Involves acting as a trier of fact-like a jury in applying rules to a particular fact situation
- Examples include: (1) Administrative hearing in an appeal of a Code Enforcement Case, and (2) Planning Commission or City Council decision on a Conditional Use Permit
- All interested parties entitled to due process, which includes proper notice, an opportunity to be heard, and an unbiased decision-maker making decisions based upon evidence presented at hearing
- Decision makers should not advocate for and express a position prior to the hearing
- Ex-parte contacts-discouraged. However, disclosure at a minimum is required

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Fair Hearing – Local Requirements

88

- Multiple requirements throughout the Charter and the Code

Examples include:

1. Rules for adopting resolutions and ordinances
[Charter Sections 311 and 312]
2. Rules for Administrative Appeals of Code Enforcement Complaints *[CVMC Chapters 1.40 and 1.41]*
3. Rules for applications and hearings on land use permits *[CVMC Chapter 19.14]*

88

Competitive Bidding Requirements

89

- Most state and local governments require some level of competitive bidding
- Competitive bidding generally requires that the contracting agency:
 - Widely publicize the contract opportunity
 - Provide same information to everyone
 - Apply evaluation criteria consistently
 - Public Works Contract goes to lowest, responsive, responsible bidder
- City contracting rules contained in Charter Sections 1009 and 1010, and CVMC Chapter 2.56

89

Question #10

90

Who was the youngest Supreme Court Justice at the time of appointment?

- A. Justice Sonia Sotomayor
- B. Justice Brett Kavanaugh
- C. Justice Joseph Story
- D. Justice Thurgood Marshall

90

Post Employment

91

No Lobbying Rules

- GC 87406.3 provides Elected Officials and City Managers are prohibited for a period of one year after leaving office, from representing any other person, for compensation, by appearing before or communicating with their former agency to influence the decision of the agency in an administrative or legislative action
- CVMC 2.01.030(C)(6) provides a similar prohibition for Board and Commission members

No Influencing Prospective Employment

- GC 87407 provides no public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning prospective employment

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92

Post
Employment
Practice Tips

1. Be aware that after leaving office compensated lobbying prohibitions apply
2. When participating in any City business or decision, you should not be seeking a future employment relationship with the person or party before you

92

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Concluding Thoughts

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graph TD; A[Put the public's interest above your own] --> B[Obtain no personal gain from your position]; B --> C[Treat people fairly]; C --> D[Complex World with Complex Rules: Seek Help!];
```

The flowchart consists of four teal-colored rectangular boxes arranged in a 2x2 grid. Arrows indicate a clockwise flow from the top-left box to the top-right, then to the bottom-left, and finally to the bottom-right box.

- Top-left box: Put the public's interest above your own
- Top-right box: Obtain no personal gain from your position
- Bottom-left box: Treat people fairly
- Bottom-right box: Complex World with Complex Rules: Seek Help!

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Next Steps

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- ▶ You will receive an e-mail from Melanie Culuko with instructions on how to self-certify your participation in the training
- ▶ Attendee proof of participation information will be provided to the City Clerk
- ▶ If you have questions after the training please feel free to contact City Attorney staff or City Clerk staff

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Questions?

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Resources

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Brown Act:

- Attorney General Website
www.ag.ca.gov/publications/brownact2003.pdf
- League of California Cities Publication: "Open & Public V: A Guide to the Ralph M. Brown Act" www.cacities.org/resources/publications
- Contact City Attorney or City Clerk (cityclerk@chulavistaca.gov)

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Resources

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Political Reform Act:

- Fair Political Practices Commission (FPPC): www.fppc.ca.gov
- California Attorney General: www.caag.ca.us
- Institute for Local Government:
www.ca-ilg.org/AB1234Compliance

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